1. **Percent Calls Blocked** -- The total number of calls blocked from an ILEC network completing to a CLEC network due to insufficient trunking as a percentage of all call attempts. This would be compared to call blockage percentages on calls completely in the ILEC network.

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Model Regulatory Procedures for The Enforcement of Interconnection Agreements

November 1997

Teleport Communications Group

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Enforcement of Interconnection Agreements

Enforcement of Interconnection Agreements between incumbent local exchange carriers (ILECs) and competitive local exchange carriers (CLECs) is the province of the state regulatory agencies according to the Eighth Circuit Court of Appeals.[1] State regulators must exercise this responsibility expeditiously to further the public interest in having a competitive choice among local telecommunications carriers. The critical need for speedy action was underscored earlier this year by the Iowa Utilities Board, the first state public utility commission (PUC) to impose civil penalties on a recalcitrant ILEC (U. S. West):

> "The timely implementation of the interconnection agreement ... is a matter of highest public policy importance under Iowa code ..., and under the Federal Telecommunications Act of 1996. It is essential to the development of local service competition that U. S. West comply with the implementation schedule set by the board."[2]

Moreover, states may not erect or maintain barriers to entry in the local telecommunications market, and cumbersome regulatory processes that themselves delay implementation of Interconnection Agreements certainly constitute a barrier to entry, because they favor incumbents.[3]

With few exceptions, 100 percent of local exchange service customers still take ILEC service. Thus ILECs have a strong market incentive to delay implementation of Interconnection Agreements because delay may accomplish four ILEC objectives: it keeps customers from selecting a CLEC;

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[1] Iowa Utilities Board v. FCC, 120 F. 3d 753 (July 18, 1997).

[2] Order Finding Continuing Violation and Levying Civil Penalties. State of Iowa, Department of Commerce, Utilities Board. Docket No. AIA-96-1 (ARB-96-1) In Re: AT&T Communications of the Midwest, Inc., and U S West Communications, Inc. April 4, 1997.

[3] 47 U.S.C. § 253 (a).

it can limit CLEC revenues; it drives up CLEC regulatory costs; and it forces CLECs to divert resources away from investment in competitive infrastructure in order to participate in dispute resolution processes.

ILECs may seek to evade their Interconnection Agreement obligations in different ways. One way is to "reinterpret" the terms of the agreement, for example, saying they did not "intend" a specific definition when they signed the agreement. Another way is to declare a dispute over facts, such as traffic volumes, to create a "billing dispute." So long as a "billing dispute" remains unresolved, the ILEC can avoid paying a CLEC. A third way is to experience "technical difficulties" of various kinds to "excuse" performance that impairs CLECs reputations. A fourth way is to claim that CLECs have failed to provide needed information to enable ILECs to meet their obligation to provide interconnection, collocation, or access to unbundled network elements. Neither these nor any other attempts to delay interconnection and CLEC access to unbundled elements is lawful, but already, it is clear that some ILECs are more than willing to risk having their actions declared impermissible and even to risk financial penalties, in order to frustrate and delay local exchange competition for as long as possible.

Unfortunately, the requirement and opportunity to enforce Interconnection Agreements find some state regulatory agencies totally unprepared.[4] Understandably, many state regulatory agencies are not experienced in what is, in essence, quasi-judicial contract enforcement. State administrative procedures, established by state legislatures to enable state regulators to protect ratepayers from monopoly abuse, are not designed to adjudicate contract disputes between businesses who are interdependent rivals. Thus new, focussed, and streamlined state regulatory procedures are needed to permit **swift enforcement of Interconnection Agreements as contracts.**

Enforcement of Interconnection Agreements is very different from traditional regulatory processes.

[4] Notable exceptions may be Iowa, New York and Maryland, all of which acted swiftly in dealing with Bell Operating Company attempts to avoid obligations under specific interconnection agreements.

Regulatory proceedings, especially rate cases but also service quality enforcement and other types of proceedings, accustom Commissions to "cut the baby in half" solutions -- that is, to render a decision that balances the interests of two parties (usually telecommunications service providers and consumers) more or less equally. Enforcement of Interconnection Agreements demands a completely different decision criterion. The Commission must decide what the Agreement said, how parties' actions pursuant to the disputed portions of the Agreement reflect the intent of the parties in meeting the requirements of the Act, and whether the actions taken by the parties give effect to that intent. Enforcement of Interconnection Agreements rarely should result in a "compromise" as in a traditional regulatory proceeding, but rather in most cases should result in a finding for or against the complainant, as in a traditional contract dispute. **Because in approving the Agreement initially the Commission has already found its terms to be nondiscriminatory and in the public interest, the public interest can only be served by enforcing the agreement as written.**

Of course it is self evident that the Commission must not during enforcement permit either party to re-litigate the Interconnection Agreement itself, by arguing that circumstances have changed or otherwise. Enforcement must proceed as in interpretation of a contract, with the added consideration that the Interconnection Agreement is a special type of contract that has already been found to serve a public purpose and must be enforced so as to actually accomplish the objectives of the Telecommunications Act of 1996.

Resolving a dispute between businesses about business practices pursuant to an Interconnection Agreement should not involve any parties other than those businesses. This would simply prolong the proceeding, give rise to attempted intervention by parties with no financial or operational interest in the outcome of the dispute, and create yet another incentive for the ILEC to delay resolution and to actually create sham disputes.

Just as many normal commercial contract disputes are resolved through binding arbitration, enforcing some Interconnection Agreements could be more **akin to commercial arbitration** than

to regulatory functions. Thus it is also necessary for PUCs to consider whether particular personnel experienced in regulatory processes have the background and training to effectively conduct enforcement proceedings. If a hearing examiner's or administrative law judge's (or Commissioner's) knowledge of relevant contract law is limited, and/or if the person has had no experience with arbitration, a Commission may decide to assign an enforcement proceeding to a commercial arbitrator. In the interest of time, too, it might be appropriate for a Commission to appoint an outside arbitrator to conduct enforcement proceedings. At the very least, Commissioners should if needed provide the staffer or Commissioner acting as hearing examiner with special training as an arbitrator.[5]

TCG offers the following Model Regulatory Procedures for the Enforcement of Interconnection Agreements. In some cases amendments to the state administrative procedures' laws may be necessary to permit the regulatory agencies to adopt streamlined procedures. The Model, with appropriate rewording, could also serve as Model Legislation.[6]

[5] TCG believes that ideally the parties should be free to agree to have their dispute resolved by a commercial arbitrator, rather than submit it to a PUC.

[6] The model draws heavily on Illinois SB 700 Amending the Public Utilities Act 220 ILCS 5/13.

MODEL REGULATORY PROCEDURES FOR SWIFT ENFORCEMENT OF INTERCONNECTION AGREEMENTS

Purpose

The federal Telecommunications Act of 1996 established the national goal of opening all telecommunications service markets to competition and accords to the states the responsibility to establish and enforce policies necessary to attain that goal.

It is in the immediate interest of the People of the [state] for the State to exercise its responsibilities and rights within the new federal statutory framework to ensure that all the benefits of competition in all telecommunications service markets are realized as effectively as possible.

Protection of the public interest requires changes in the regulation of telecommunications carriers and services to ensure, to the maximum feasible extent, the reasonable and timely development of effective competition in all telecommunications service markets.

It is necessary and appropriate to establish rules to encourage and ensure orderly transition in the development of markets for all telecommunications services and to promote effective and sustained competition in all telecommunications markets.

For the purpose of the adoption of such rules, telecommunications service" means [existing definition] and also includes interconnection arrangements and services and access to unbundled network elements of incumbent local exchange carriers pursuant to the Telecommunications Act of 1996.

Adoption and Authority

The [State PUC] herewith adopts enforcement rules and procedures that ensure that interconnection

arrangements entered into by carriers and approved by the [PUC] are implemented and enforced. The Commission has general rulemaking authority to make rules necessary to enforce these rules and procedures consistent with the Telecommunications Act of 1996 and [applicable state statute].

Rules

1. PROHIBITED ACTIONS OF TELECOMMUNICATIONS CARRIERS. A telecommunications carrier shall not knowingly impede the development of competition in any telecommunications service market. The following prohibited actions are considered *per se* impediments to the development of competition:

   a. Refusing or delaying interconnections or providing inferior connection to another telecommunications carrier;

   b. impairing the speed, quality or efficiency of services used by another telecommunications carrier;

   c. denying a request of another provider of telecommunications for information regarding the technical design and features, geographic coverage, information necessary for the design of equipment, and traffic capabilities of the local exchange network, except in the case of proprietary information, in which case the disclosure of such propriety information may be required, subject to proprietary agreement or protective order;

   d. delaying access in connecting another telecommunications carrier to the local exchange network whose product or service requires novel or specialized access requirements;

e. refusing or delaying access by any person to another telecommunications carrier, including but not limited to preventing the access by a tenant or occupant of a building to a carrier of his or her choice, or acquiescing to such prevention;

f. acting, or failing to act, in a manner that has a substantial adverse effect on the ability of another telecommunications carrier to provide service to its customers;

g. violating the terms of or unreasonably delaying implementation of an Interconnection Agreement entered into pursuant to Section 252 of the federal Telecommunications Act of 1996 in a manner that unreasonably delays or impedes the availability of telecommunications services to consumers;

h. other actions that impede competition.

2. ENFORCEMENT. The Commission shall enforce the rules set forth in Section 1. Unless the Commission and the parties otherwise mutually agree, the Commission shall use the procedures set forth in this Section for the review of complaints relating to violations of Section 1 or Interconnection Agreements.

3. COMPLAINT RESOLUTION BY CARRIERS. A carrier having a complaint regarding an action prohibited by Section 1 or an Interconnection Agreement with another carrier must notify the respondent of the alleged violation in writing. A complainant must either (a) exhaust the specific dispute resolution process provided for in its Interconnection Agreement with the respondent, or (b) offer the respondent 48 hours to correct the situation prior to filing any complaint under this Section. Provision of notice or the opportunity to correct the situation creates a rebuttable presumption of knowledge under either action.

4. COMPLAINT PROCESS. If no resolution is reached under 3(a) or 3(b), the complainant may file with the Commission and initiate the complaint process.

a. the complaint shall be filed with the [appropriate officer] of the Commission and shall be served in hand upon the respondents;

b. at any time following the filing of the complaint, parties may commence reasonable discovery. Parties must respond to the discovery request within fourteen days after the date the request is made;

c. responsive pleading to the complaint must be filed with the Commission within seven days after the date the complaint is filed;

d. a determination of grounds for the complaint and, if necessary, a directive for legal notice will be made within three days after the date the response is filed;

e. a pre-hearing conference before the Commission's designated hearing examiner or arbitrator will be held within fourteen days after the date the complaint is filed;

f. the hearing shall commence within thirty days after the date the complaint is filed;

g. the hearing examiner [arbitrator] shall issue its decision within sixty days after the date the complaint is filed;

h. the hearing examiner's [arbitrator's] decision shall be considered a final order ten days after the date the decision is issued, unless the Commission issues its own final order within ten days after the date the hearing examiner or arbiter issued its decision.

5. REQUEST FOR EMERGENCY RELIEF. If the alleged violation has substantial adverse effect on the ability of the complainant to provide service to customers, the complainant may include in its complaint a request for emergency relief. The Commission shall address the request in accordance with the following:

   a. the Commission, acting through its designated hearing examiner [arbitrator], shall issue a decision regarding the request within two business days of the date the complaint is filed;

   b. the decision of the hearing examiner [arbitrator] shall be considered an order unless the Commission itself issues its own order within two calendar days of the date the hearing examiner's [arbitrator's] order.

6. INJUNCTIVE RELIEF. If the Commission believes that there is an imminent threat to competition or to other aspects of the public interest, the Commission may, notwithstanding any other provision of this rule, seek temporary, preliminary, or permanent injunctive relief from a court of relevant jurisdiction either prior to or after the hearing.

7. PENALTIES. Upon completion of the hearing and a determination that all or any portion of Section 1 of the Commission's rules have been violated, the Commission shall impose penalties on the telecommunications carrier(s) that has (have) violated the rules.

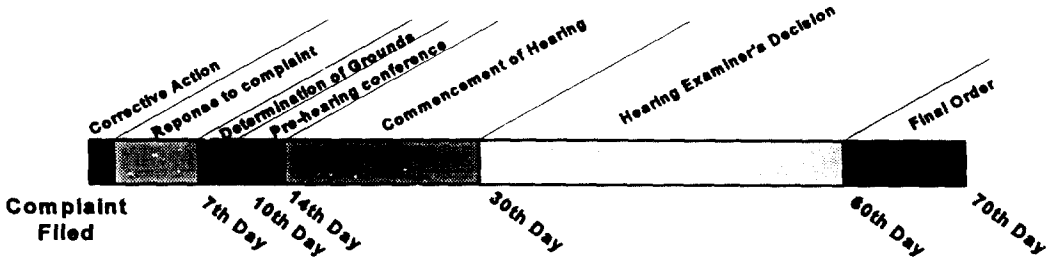
   a. The party or parties responsible for the violation shall each pay the complainant an amount equal to three times the complainant's lost revenue and added costs resulting from the violation(s), or $30,000 per violation, whichever is greater;

   b. each day that the violator was in violation of the rule shall be considered a separate violation;

c. such penalties shall be in addition to any liquidated damages provided for in the interconnection agreement which is the subject of the complaint.

8. RECOVERY OF THE COMMISSION'S COSTS. The Commission shall assess the losing party or parties for the Commission's costs of investigating and conducting the complaint proceeding. If parties settle before a final decision, commission costs are divided equally, unless parties agree otherwise in settlement.

Recommended Response Times for Swift Enforcement



For further information, please contact Gail Garfield Schwartz at (718) 355-2892 or e-mail to: schwartz@tcg.com.

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Model Performance Parity Measures for Facilities-Based Competition

November 1997

TCG

Teleport Communications Group

Table of Contents

INTRODUCTION

TCG's *The Performance Parity Principle* (July 1997), discussed the duty of incumbent local exchange carriers ("ILECs") under the Telecommunications Act of 1996 ("Act") to provide competitive local exchange carriers ("CLECs") with interconnection and access to unbundled network elements that is at least equal to that the ILECs provide to themselves. TCG refers to this statutory requirement as the **performance parity principle**.[1] In this paper, TCG proposes Model Performance Parity Measures for which ILECs should be required to provide comparative data to demonstrate their compliance with the performance parity principle. For each measure, TCG describes *"what"* the measure is and *"why"* it is necessary.

The proposed performance measures for interconnection and access to unbundled ILEC network elements reflect the fact that only facilities-based competition is **real** local exchange competition. Resellers of local exchange service simply rebrand ILEC services; facilities-based carriers, on the other hand, seek to differentiate their services from ILECs' services by offering state-of-the-art technology, unique service packages and the highest service quality at the most competitive price.

The primary potential impediment to robust facilities-based local exchange competition is the ILECs' legacy control over key telecommunications facilities which can degrade a facilities-based CLEC's performance. Just as the weakest link in a chain determines the strength of the entire chain, so does the worst-performing component of a telecommunications service determine the quality of that service. CLECs forced to accept substandard interconnection or access to unbundled ILEC elements will suffer because customers will assume that the CLEC, not the ILEC, is causing poor quality service. Therefore, facilities-based competitors must enjoy interconnection arrangements and access to unbundled elements that are **at least** equal in quality to that provided by the ILEC to its own retail operations or to any other carrier or wholesale customer, **whichever is higher**.[2]

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[1] *The Performance Parity Principle* is available on TCG's website at www.tcg.com.

[2] 47 U.S.C. §251(c). Section 251(c)(2)(C) of the Act imposes on ILECs "the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network

The "whichever is higher"criterion is essential because an ILEC has an incentive to provide the best possible service to its largest customers (including reseller CLECs who, as rebranders, are in effect ILEC "sales agents"). So, it is important not to limit parity comparisons solely to the service quality the ILEC provides to itself. CLECs must also receive service equal to that which the ILEC provides its best customers. Otherwise, consumers will be robbed of competitive choice in the local telecommunications marketplace. Consumers must be able to judge a competitor on the added value it brings to the market.

All parties will benefit most from performance parity reports that lead directly to a "yes" or "no" answer: "yes" the ILEC provided parity for each performance measure, or "no" it did not. CLECs and regulators must be able to see quantitative data -- or performance measures -- and easily identify whether the ILEC has met its performance parity requirements. A comparison of data sets, one reflecting the ILEC's performance to itself (as well as affiliates and ten largest commercial clients), and others reflecting the ILEC's performance for each CLEC with which it interconnects, will quickly reveal whether the performance parity principle has been satisfied. In certain cases, tests of statistical significance will be required where there are differences in the absolute numerical outcomes reported for CLECs and ILECs.

TCG proposes 38 initial performance measures for monthly ILEC reporting. TCG believes that **all these measures should be required by state regulators immediately**. CLECs cannot be asked to "give up" any measures in order to be "assured" that other measures will be made and reported, for this would simply give the ILEC a welcome incentive to "game" the process of providing performance parity. Performance parity reports should be given to each CLEC on itself, on the ILEC, on the ILEC's ten largest customers taken as a group, and on all CLECs taken as a group. When reporting on its performance parity *vis à vis* each CLEC, the ILEC should of course confine

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. . . that is at least equal to that provided by the local exchange carrier to itself **or** to any subsidiary, affiliate, **or** any other party to which the carrier provides interconnection." (emphasis added). Section 251(c)(3) of the Act further imposes on the ILEC "the duty to provide, to any requesting telecommunications carrier for the provision of telecommunications service, nondiscriminatory access to network elements on an unbundled basis . . .." FCC rule 51.311(b) establishes that "nondiscriminatory" access with respect to unbundled elements means access that is, in fact, "at least equal" in quality.

its measures to its performance within the geographical area served by the ILEC central offices within that CLEC's service territory.

Both regulators and carriers already have plenty of experience in measuring quality of performance. ILECs monitor their own performance in most critical areas. State commissions require ILECs to file service quality data in regular reports to ensure that customers receive adequate service. In addition, the FCC requires BOCs and other large ILECs to file service quality data which the FCC publishes in the annual report, "Quality of Service for Local Operating Companies Aggregated to the Holding Company Level." So, federal and state regulators have already set a precedent in asking for essentially the same type of service quality information that TCG asks the ILEC report on, and the ILECs already have experience in measuring and reporting on these types of performance categories. In some cases, where no existing internal measurement is performed by the ILEC (to TCG's knowledge), TCG proposes a reasonable proxy to demonstrate performance parity.

All parties stand to benefit immediately from satisfaction of the performance parity principle. The ILECs benefit because they will not be subject to repeated complaints, and can avoid lawsuits. The Bell operating companies ("BOCs") seeking to enter the interLATA market benefit additionally because they will satisfy the 14-point competitive checklist easily and swiftly.[3] Regulators benefit from being able to expedite review of interLATA entry applications from BOCs, and will have to review fewer complaints from CLECs regarding ILEC violation of interconnection agreements. [4] When CLECs benefit from good ILEC service, consumers benefit from improved service obtained more quickly from CLECs. Consumers also benefit from the cost savings all service providers will

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[3] 47 U.S.C. § 271 (c)(1)(B).

[4] The Department of Justice places great weight on the importance of performance benchmarks. In recommending denial of SBC's interLATA application in Oklahoma, the Department stated: "A record of performance benchmarks measured in an objective fashion -- and, if possible, commitments to maintain such standards -- is key to preventing the BOC from backsliding . . .Without such benchmarks in place, competitors and regulators will have considerable difficulty in detecting deterioration of wholesale support processes . . . ." Evaluation of the U.S. Department of Justice, In re Application of SBC Communications Inc. Et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in the State of Oklahoma, CC Docket No. 97-121 (May 16, 1997).

realize when lengthy, costly regulatory or legal action is precluded. Finally, everyone benefits if competition becomes sufficiently robust so that no economic regulation is needed at all.

In view of the critical need for performance benchmarks to promote competition, and the tremendous benefits such benchmarks will afford all parties, it would serve state public utility commissions (PUCs) well to immediately establish the measures for which comparative data are to be recorded by ILECs. A nationally uniform reporting format would make it easier and less costly for all parties: regulators, ILECs and CLECs. State commissions should be free to add to national performance measures should they be required to do so by state legislation or should the state commissions otherwise find it appropriate to do so. States that adopt the uniform reporting standards will reduce uncertainty and attract further investment by entrants. NARUC can play a constructive role in ensuring consistency across states by encouraging the adoption of a model reporting template for ILECs in all states.[5]

Whatever measures are adopted, they must account for the transition from manual to electronic communication between carriers. In the short run, CLECs and ILECs will communicate with each other by "manual" means, such as telephone conversations and fax. Over time, electronic interfaces between CLEC and ILEC databases will be developed and deployed. Thus, model performance measures must account for both modes of communication between carriers. There may be multiple forms of interfaces (e.g., dedicated connections, Internet access, etc.), and the performance measure requirements must recognize the CLECs' right to choose among these various options.

THE THRESHOLD MEASUREMENT ISSUE: PERFORMANCE PARITY MUST BE

[5] The performance parity principle applies to all ILECs per section 251 of the Act. Section 251(e) of the Act allows smaller carriers to be exempted from such requirements and the reporting requirements suggested in this paper upon showing that the ILEC would face undue economic burdens as a result and that such an exemption would be in the public interest.

MEASURED SEPARATELY BY CIRCUIT TYPE

In measuring ILEC performance, a delineation among circuit type is crucial to ensure that an "apples to apples" comparison is made. Performance must be reported separately for analog and digital loops because digital loops are typically used for high capacity services, which CLECs focus on. Digital loop troubles will have a greater impact on a CLEC's customer than analog loop troubles. Trouble with one digital loop serving a Centrex customer with 24 voice-grade circuits could cause more harm to the CLEC customer than a trouble with one analog loop serving one customer telephone.

In the digital service category, reports must be provided separately for DS-Os, DS-1s and DS-3s. A single DS-3 (the equivalent of 672 voice grade circuits) affects a much greater number of lines than a DS-0 (the equivalent of a single voice grade line). Therefore, any type of trouble with a DS-3 will have a much greater impact on a CLEC's customers than a trouble with a DS-0. It would be inaccurate and inequitable to declare that an ILEC meets the performance parity principle based on average parity performance across all circuits because one problem with a CLEC's DS-3 circuit could be damaging to the CLEC even if there were no problems at all with DS-1s and DS-0s. Moreover, standard ILEC provisioning and repair intervals vary between DS-3s, DS-1s and DS-0s, making aggregated service statistics even more misleading. So, separate reports must be issued for up to six categories of service in total: DS-0, DS-1, DS-3, and their analog equivalents.[6]

The ILEC needs to monitor performance of its own facilities according to loop type; it must do the same for CLECs in order to comply with the Act's performance parity requirement. Disaggregated reporting helps the ILECs because it enables them to easily target trouble areas and to concentrate efforts to remedy any noncompliance. Disaggregated data also gives CLECs increased ability to monitor ILEC's performance, which will minimize the need for the state public utilities commissions ("PUCs") to get involved in complicated fact-finding missions and complaint proceedings. This will

[6] In the future, performance parity reporting will also be necessary for non-circuit services such as ATM.

in turn help PUCs fulfill their obligation to enforce interconnection agreements between ILECs and CLECs.

TCG'S PROPOSED PERFORMANCE MEASURES

In this paper, TCG proposes an initial set of 38 performance measures for which TCG believes the ILEC should report comparative data to ensure that it provides the CLECs with performance parity as required by the Act. While this number may seem large at first, reporting on these categories will not burden the ILECs because they already maintain or have under development for their internal use the necessary monitoring systems and report-gathering capacity. These categories span four carrier processes: pre-ordering, provisioning, maintenance and repair. In addition, these measures address billing; network performance; operator services and directory assistance; directory listings; emergency services; and code openings. Lacking parity for any one of these categories, the ILEC will have failed its legal obligation.

Pre-Ordering

To provide performance parity, ILECs must allow CLECs to enjoy equal access to information regarding ILEC customers. This is necessary to enable customers to evaluate CLEC offers on an apples-to-apples basis. Implicit in performance parity for pre-ordering is the ability of the ILEC to use CLECs' fact-finding to stifle competition. Every time the CLEC "asks the ILEC" for information about a customer's services, the ILEC is given advance warning that it may be about to lose a customer. Actual performance parity will not be realized until CLEC sales personnel can obtain the same information from ILEC databases within the same time frames as the ILEC's sales personnel, without having to "ask the ILEC." Initially, the CLECs will access information by manual means, such as calling ILEC personnel. ILEC response on the CLEC query must be separate from the ILEC's retail service and sales force; the ILEC sales and marketing organization must not be notified about the CLEC's query or be able to find out about it.

Item 1: Pre-Ordering Office Access within 20 Seconds

What: Measures the proportion of CLEC calls answered by the ILEC within twenty seconds.

Why: When a consumer is transitioned from an ILEC to a CLEC's service, the CLEC needs information about the particular services that customer receives from the ILEC, to ensure that the CLEC can provide at least the same set of services. Consumers do not always know the services that they are obtaining, but ILECs do know and ILECs currently obtain customer information from their electronic databases. Facilities-based CLECs eventually must be able to access the same information through electronic interfaces between CLEC and ILEC electronic databases. Until then, however, CLECs must rely on the ILECs' manual processes to obtain this critical information. TCG believes that twenty seconds to answer a phone is a reasonable proxy for access that is "at least equal in quality" to the electronic access enjoyed by the ILEC.

TCG also recommends collecting information on "Order Provisioning Access Within 20 Seconds" and "Maintenance/Repair Access Within 20 Seconds". The rationale for collecting these measures is the same as that for pre-ordering. The only difference is that the call from TCG takes place while TCG is conducting a different task on behalf of the customer (provisioning and repair, respectively).

Item 2: Pre-Order Information System Availability

What: Measures the percent of time that the ILEC and the CLECs have electronic access to the ILEC's pre-ordering databases.

Why: Should an ILEC choose to utilize electronic interfaces to make customer information available to the CLEC, the CLEC must have access to ILEC pre-ordering databases through electronic interfaces at least the same percentage of time that the ILEC itself has direct access to the databases through

electronic means. This performance measure precludes a lengthy "transition phase" during which an ILEC provides a mix of manual and electronic interfaces to CLECs, while serving its own needs electronically.

Item 3: Obtain Appointment Schedule via a System Interface

What: Measures the percent of time the CLEC has access to the ILEC pre-ordering database to: (1) view available installation appointments; and (2) to electronically schedule installation appointments by ILEC personnel.

Why: In order for a CLEC to schedule a turn-up time for service to a new customer utilizing ILEC unbundled elements (e.g., loops) or reselling ILEC service, a CLEC must know when ILEC installation personnel are available, without having to "ask the ILEC." The ability to directly access the ILEC database will provide this capability. The CLEC also must be able to schedule appointments electronically on the same basis as the ILEC. This will allow CLECs to give information to their customers without fear that the ILEC will delay schedules so as to discriminate against CLEC customers.

Item 4: Obtain Customer Service Record (CSR) via a System Interface

What: Measures the percent of time the CLEC has access to information as to which services a customer currently receives from the ILEC.

Why: When a CLEC seeks to serve an ILEC customer, the CLEC must know what services, features, and options the customer receives from the ILEC. The customer will not necessarily have access to that information. If a CLEC simply "asks the ILEC," the ILEC will know the customers being addressed by its competitors, and then be in a position to target those customers for special treatment.[7] This measure of performance parity for electronic

[7] Note well: the mere existence of electronic interfaces does not guarantee responsible competitive behavior by the ILEC. "Fire walls" between the ILEC systems personnel who service CLEC orders and ILEC sales force should be permanently established.

interfaces ensures that the CLEC gains access to this information in a manner that will not compromise the CLEC's competitive position.

Item 5: Firm Order Commitment ("FOC") Intervals

What: A FOC is a time commitment from the ILEC to the CLEC (or to the ILEC customer in the provision of its own retail service) indicating when a requested installation will be completed. Average FOC interval is the mean amount of time that it takes an ILEC to set and communicate the date a work order will be completed.

Why: Customers always want to know when facilities will be installed and service turned up. A CLEC's inability to commit to an install date owing to the ILEC's failure to provide a timely FOC will disadvantage the CLEC in the eyes of consumers. The underlying theme behind performance parity for FOCs is ***"first in, first out."*** The first order requested must be the first order given a FOC. All orders should be given the same FOC priority without regard to whether that order is for an ILEC customer or a CLEC customer.

Some ILECs suggest that FOC records be documented by recording the percentage that are met within a certain time frame (e.g., within 24 hours). Such statistics do not meet the performance parity principle, as the following example shows. Suppose that the ILEC delivers a FOC within 24 hours in exactly 90% of the cases for both a CLEC and its own customers. The ILEC could actually provide FOCs to its own customers within an average of 2 hours while providing FOCs to the CLEC in an average of 23 hours. The commercial advantage to the ILEC in this scenario is that the ILEC would often be able to provide a FOC to its customers the same day as a customer requests service, while CLEC customers would generally have to wait until the next day.